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Comment: Ohio Supreme Court Appellate Jurisdiction

Ovid C. Lewis

COMMENT

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INTRODUCTION

This article essentially provides information concerning the operation of the Ohio Supreme Court.[1] With full realization of the divers inferences which may be drawn from the statistics reported, I have reached some conclusions and made a few suggestions. The reader is provided with much of the basic research accomplished[2] and may differ from the conclusions and suggestions of the author. Moreover, I am aware of the necessarily subjective nature of any categorization of the significance attributed to a particular case. However, the statistics appear to support the assignment made to my tri-partite classification: high, moderate, low.[3] It is relevant that the categorization of the cases was accomplished prior to the compilation of data. Thus, I cannot be accused of making an ex post facto classification to buttress my ultimate conclusions.

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1. The approach is general and statistical. For an excellent analysis of the constitutional and statutory appellate jurisdiction provisions in Ohio, the reader is referred to Skeel, *Some Aspects of Appellate Procedure in Ohio,* 12 W. RES. L. REV. 645 (1961).

Ohio has a judicial council responsible for compiling data concerning the state's judicial system. "There shall be a judicial council of sixteen members for the continuous study of the organization, rules, and method of procedure and practice of the administrative agencies and of the judicial system of the state, the work accomplished, and the results produced by those agencies, and by the judicial system and its various parts . . . ." OHIO REV. CODE § 105.51 (Supp. 1962).

However, the statistical data reported concerning the operation and functioning of the Ohio judicial system is meager. See the REPORTS OF THE JUDICIAL COUNCIL OF OHIO (1951-1961).

2. See charts I-XIX.

3. Basically, the significance was arrived at by evaluating the effect of a case on legal precedent, the number of persons affected by the decision and the propagated rule, and the nature of the interest involved. Thus, even though the lower court was clearly wrong and the supreme court reversed, if the effect of the case was merely to correct the equities in a specific case, the significance would be limited. This is not to say that such a case should not be reviewed. In emphasizing the general importance of a case the criteria resemble those suggested by Justice Harlan regarding federal certiorari practice. "The cornerstone of a petition for certiorari in a federal case is a showing that the question sought to be reviewed is one of general importance. Review by certiorari is in the interest of the law, its appropriate exposition and enforcement, not in the mere interest of the litigants." (Quoting Chief Justice Hughes, S. Rep. No. 711, 75th Cong., 1st Sess. 39). Harlan, *Manning the Dikes,* 13 RECORD OF N.Y.C.B.A. 541, 551 (1958).

The material here developed does not encompass the history of Ohio appellate procedure.[4] Instead I deal with the extant system, its problems, and possible solutions.

The crux issue in appellate review is simply stated: Is the case a proper one for review? The *quaere* is not so easily answered. Certain considerations undoubtedly are involved. On the one hand, is the case forensically unique or novel? Was justice meted out below? Did the lower court err? Will review and reversal deter proliferation of errors in lower courts? Will review and decision provide authoritative guidance to a developing area of the law? Will the decision affect a substantial segment of the population?[5] On the other hand, the factor inhibiting appellate review is the incubus of crowded appellate dockets.[6] With the press of time, the court should wisely utilize its review power by hearing only the proper cases. However, state constitutional and statutory provisions compelling the court to exercise broad appellate review frustrate achievement of an optimal appellate system.[7]

With the above considerations in mind, the cases decided by the Ohio Supreme Court during the 1962 term were analyzed. For purposes of comparison a brief analysis of the work of the New Jersey Supreme Court during the 1960-1961 term is included. The New Jersey judicial system was selected because of its reputation for dispensing efficient and effective justice. Sheldon D. Elliott, Director of the Institute of Judicial Administration, eulogizes the new judicial system in New Jersey:[8]

> Has the new system worked? The answer is a definite and overwhelming "Yes." Pre-existing accumulated backlogs of untried cases have been disposed of, and current cases are brought to trial within a few months instead of years. Appeals are heard and decided promptly . . . . In short, "Jersey justice," no longer a term of opprobrium, has become an enviable synonym for modern and efficient judicial administration.[9]

A specific purpose of this project concerned the feasibility of adoption in state judicial systems of a procedure analogous to United States Su-

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4. See Skeel, *Constitutional History of Ohio Appellate Courts*, 6 CLEV.-MAR. L. REV. 323 (1957).

5. See POUND, APPELLATE PROCEDURE IN CIVIL CASES 378-79 (1941); Parker, *Improving Appellate Methods*, 25 N.Y.U.L. REV. 1 (1950); Traynor, *Some Open Questions on the Work of State Appellate Courts*, 24 U. CHI. L. REV. 211 (1957).

6. *Compare* STATE OF NEW YORK, THE JUDICIAL CONFERENCE, FIFTH ANNUAL REPORT 159, table 1 (1960), *with* STATE OF NEW YORK, THE JUDICIAL CONFERENCE, SIXTH ANNUAL REPORT 206, table 1 (1961), *and* STATE OF NEW YORK, THE JUDICIAL CONFERENCE, SEVENTH ANNUAL REPORT 188, table 1 (1962).

7. This is one of the problems in the New York appellate structure. The court of appeals must exercise broad mandatory appellate jurisdiction. N.Y. CONST. art. 6 § 3. See also N.Y. CIVIL PRACTICE ACT § 5601 (effective September 1, 1963).

8. The present court structure in New Jersey was established on September 15, 1948, when the Judicial Article of the New Jersey Constitution of 1947 became effective.

9. ELLIOTT, IMPROVING OUR COURTS 14 (1959).

preme Court Rule 20.[10] This rule permits the Court to certify for hearing a case pending in the court of appeals. Similar procedures exist in New Jersey and California. I believe the New Jersey experience exemplifies the desirability of adopting a similar method of review in Ohio.

APPELLATE REVIEW IN THE OHIO SUPREME COURT — 1962 TERM

For the purposes of this study, the reader should be apprised generally of the appellate structure in Ohio. The relationship between the courts is reflected in chart one.[11] At the appellate apex stands the supreme court.[12] Mandatory appeals, *i.e.,* appeals as of right, are taken to the supreme court from the determinations of the Public Utilities Commission, the Board of Tax Appeals, and the courts of appeals.[13] These cases comprised 56.7 per cent of the total number of cases heard during the 1962 term. Permissive appeals, *i.e.,* appeals allowed pursuant to a motion to certify, are taken only from the courts of appeals.[14] These cases comprised 18.3 per cent of those heard. Cases are also reviewed by certification "whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals . . . ."[15] In addition, the supreme court exercises original jurisdiction in two instances: (1) disciplinary proceedings concerning attorneys,[16] and (2) applications for issuance of the extraordinary writs of quo warranto, mandamus, habeas corpus, prohibition, and procedendo.[17] These original jurisdiction cases comprised 23.7 per cent of the total cases heard.[18]

For the jurisdiction of the court of appeals and court of common pleas, the reader is referred to chart two.

10. 28 U.S.C. § 1254 (1948):
"Courts of appeals; certiorari; appeal; certified questions.
"Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, *before or after* rendition of judgment or decree . . . ." (Emphasis added.)

11. See Skeel, *supra* note 1.

12. See chart II. The Ohio Constitution authorizes the appointment of a commission to serve for specified periods. OHIO CONST. art. IV, § 22. This commission has the same power and jurisdiction as the supreme court, and cases decided by the commission are not appealable to the supreme court. Maud v. Maud, 34 Ohio St. 540 (1878).

13. See chart III. Note that an appeal may also lie from the Board of Tax Appeals to the court of appeals.

14. See chart II. For purposes of this study, all motions for leave to appeal have been grouped with motions to certify.

15. OHIO CONST. art. IV, § 6.

16. OHIO REV. CODE § 4705.02. *But see* OHIO SUP. CT. R. XXVII.

17. OHIO CONST. art. IV, § 2.

18. See chart X.

Chart three sets forth the statutory authorization for appellate review, the court or agency to which the review is taken, and the type of review afforded for the probate court, juvenile court, municipal court, mayor's court, county count, police court, state agencies, Department of Taxation, Industrial Commission, Bureau of Unemployment Compensation, Superintendent of Banks, Superintendent of Building and Loan, and local boards. By reading charts two and three in conjunction with chart one, a broad picture of the appellate structure in Ohio is readily discernible.

Chart four deals only with cases coming to the supreme court from the courts of appeals. The tribunal antecedent to the court of appeals is indicated in the left column. The cases are divided into three categories: mandatory appeals, permissive appeals, and certification cases. It is telling that 72.8 per cent of the mandatory appeals are of low significance vis-à-vis only 23.5 per cent of the permissive appeals. Also, 82.5 per cent of the mandatory appeals are memorandum or per curiam decisions, while only 17.6 per cent of the permissive appeals are thus decided.

Chart five indicates the analogous figures for appeals from the Board of Tax Appeals: 52.0 per cent low significance and 48.0 per cent memorandum or per curiam decisions.

Chart six indicates the figures for appeals from the Public Utilities Commission: 66.6 per cent low significance and 66.6 per cent memorandum or per curiam decisions.

The correlation between cases of low significance and the use of memorandum or per curiam opinions is not surprising. When a case falls clearly within the ambit of an existing legal precept, there is no utility in a full-dress opinion merely reiterating traditional legal doctrine. These foredoomed cases, ripe for memorandum disposition, are usually found among the mandatory appeal cases.[19]

In chart seven an attempt has been made to place each case into a conventional legal pigeonhole. The chart manifests a striking asymmetry. Clustered under the cases of low significance are the per curiam and memorandum dispositions. Most of the memorandum dismissals are in the areas of constitutional law, criminal law, and taxation. All but two of the insignificant cases in these areas came to the court as a mandatory appeal. Full-dress majority opinions, however, are found in the areas where the cases are of moderate and high significance. As expected, those are gen-

19. Justice Cardozo's experience indicated that: "Of the cases that come before the court in which I sit, a majority, I think, could not, with semblance of reason, be decided in any way but one. The law and its application alike are plain. Such cases are predestined, so to speak, to affirmance without opinion." CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 164 (1921). During the 1960 term the United States Supreme Court utilized the device of an anonymous opinion in more than 50% of its decisions. For a discussion of the United States Supreme Court's use of per curiam opinions see *The Supreme Court, 1960 Term*, 75 HARV. L. REV. 80, 92 (1961), and articles cited at 92 n.13.

erally the cases reaching the court via a motion to certify. This is also true of cases sent to the court on certification by the court of appeals.

Chart eight contrasts mandatory and permissive appeals, cases certified by the court of appeals, and original jurisdiction cases. The rate of reversal in each appellate category is instructive. Mandatory appeals: 16.4 per cent. Cases certified by the court of appeals: 44.4 per cent. Permissive appeals: 73.6 per cent. These statistics point out that even if the lower court is clearly correct in its judgment, the supreme court must needlessly review where appeal is mandatory. The result is a reversal per curiam or a memorandum dismissal of the appeal.

Chart eight also indicates the action taken by the court in disciplinary proceedings directed against a member of the bar and in disposing of extraordinary writs. In addition, the relative frequency of each of fifteen classes of dispositions is given.

Chart nine lists the members of the supreme court, the number of opinions written per judge, and related information. The number of judges temporarily assigned to the supreme court is striking. More than 15 per cent of the majority opinions were authored by visiting judges. It is possible that the assignment of so many judges impairs predictability since the study of an individual judge's opinions will demonstrate his method of deciding a case and his values. A fortiori, the aggregate of opinions

> cumulate to show ways of looking at things, ways of sizing things up, ways of handling authorities, [and] . . . attitudes in one area of life-conflict and another . . . . For one must not forget that a particular bench tends strongly to develop a characteristic going tradition not only of ways of work but of outlook, and of working attitudes of one judge toward another.[20]

The brevity of the majority opinions (average length 3.64 pages) is another factor suggesting the cases decided are of limited significance. If a court is burdened with frivolous appeals, the treatment of more significant cases suffers as well.

On thirty-six occasions judges dissented without opinion. This is perhaps due to the necessity of examining cases on mandatory appeal where guidance is not important for the public, yet the fireside equities generate divergent conclusions. But where the case is significant, the dissenting judge will ordinarily write an opinion to force or compel "full publicity, [ride] . . . herd on the majority, and [help] . . . to keep constant the observance of that law."[21]

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20. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 34 (1960).

21. *Id.* at 26. Justice Traynor has commented extensively on the office of the dissenting opinion. "If a judge merely deems his own view preferable, and the establishment of some rule counts more than the rule itself, he should at most record his dissent in two words or preferably keep his silence. If he is convinced that the majority has so misapplied settled law

Chart ten differentiates between per curiam and ordinary disposition of extraordinary writs. Most of these writs were classified as low in significance. Most were summarily decided.

From the data contained in charts one through twelve, the picture emerges of a court handling too many cases of low significance, primarily reaching the court via mandatory appeal. To cope with this problem the court resorts to per curiam decisions, generally affirming the decision below, or dismissing the appeal. This latter device, "appeal as of right herein is dismissed for the reason that no debatable constitutional question is involved," was used in fifty-nine cases in the 1962 term. Although the court is able to avoid a hearing on a frivolous mandatory appeal, it must nonetheless examine the papers to see if there might be merit to the case.

Dean Pound incisively notes:

> [O]ur appellate courts have been burdened with another type of appeal which has been and still is a source of waste of judicial power, waste of public time, and needless expense to litigants, namely, futile appeals raising questions which have been long or well settled but are earnestly argued, often in entire good faith by those who raise them. There is more than one cause of these futile appeals. They cannot be wholly cut off. Often until the cause is argued it is difficult to distinguish them.[22]

It should be a matter of concern to every member of the bar when his brethren raise constitutional questions with the "substance of a starving pigeon's shadow" to obtain the right of appeal to the supreme court. Each such appeal detracts from the time available to consider, ponder, and decide the substantially significant cases.[23]

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or so erroneously devised a new rule as to foster a malignant growth of the law, he should at least record his dissent. Should he decide to set forth his reasons, he should do so with painstaking care. Above all, he should keep his opinion impersonal. No conscientious judge will undertake a dissent without first asking himself the searching question whether it is likely to serve the law by extracting from the shadows the problems left unstated and the theories that should eventually control. Reference to the majority opinion should be kept at a minimum, unless it serves as a time-saving device to indicate the relevant defects and gaps that compel the rationale of the dissent.

"Paradoxically the well-reasoned dissent, aimed at winning the day in the future, enhances the present certainty of the majority opinion, now imbedded in the concrete of resistance to the published arguments that beat against it. For that very reason the thoughtful dissident does not find it easy to set forth his dissent." Traynor, *Some Open Questions on the Work of State Appellate Court*, 24 U. CHI. L. REV. 211, 218 (1957).

Dillard argues cogently that the dissenting "opinion may be required, in a state court jurisdiction to provide a balanced view of a case and even the means for approaching an understanding of it." Dillard, *Dissent from Llewellyn on Dissent*, 1962 WASH. U.L.Q. 53, 63.

22. POUND, APPELLATE PROCEDURE IN CIVIL CASES 379 (1941).

23. In connection with groundless petitions for certiorari, Justice Harlan proposes that "the best hope for safeguarding the future lies in the Bar taking hold of the situation by discouraging abuses of the certiorari procedure, whether born of ignorance of the nature of the process or of lack of responsible abstention on the part of lawyers in seeking to bring 'uncertworthy' cases to the Court. Looking ahead, it is hard to think of any greater contribution that the Bar could make to the effective functioning of the Court." Harlan, *Manning the Dikes*, 13 RECORD OF N.Y.C.B.A. 541, 561 (1958).

The supreme court docket is overcrowded because of the quantity of mandatory appeals. This is one possible reason why the majority opinions are so brief. Do these opinions, written under the pressure of a crowded appellate docket, provide adequate guides for lawyers and society? The author, having enjoyed the privilege of working as a judicial clerk, knows something of the enormous amount of work that goes into an adequate judicial opinion. The author of an opinion must rework his solutions and formulations until they appear rational and harmonious with the social matrix and demands of the time. Whatever solution is arrived at, it must be posited on a solution for the situation-type of problem the particular conflict presents, both in terms of extrapolation from the past and into the future.[24] The solutions must be guides to action. They must embody rules of reason which manifest the situation-type and scope of applicability. And there must, of course, be stability and predictability. There is always the further requirement that like cases be treated alike, and that laymen's reasonable expectations be fulfilled. But law must change with the demands of the times. To use Ehrlich's overworked phrase, it must be "living law."

To decide cases properly thus requires time. And the cases on which the court expends this effort in building a valuable legal edifice should be the significant cases.

APPELLATE REVIEW IN THE NEW JERSEY SUPREME COURT — 1961-1962 TERM[25]

In New Jersey the trial court is in most instances either a county court or superior court, law or chancery division. The appellate division of the superior court has broad mandatory appellate jurisdiction over

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24. This Professor Llewellyn styles "situation sense." "The wise place to search thoroughly for what is the right and fair solution is *the recurrent problem-situation* of which the instant case is *typical.* For in the first place this presses, this drives, toward formulating a solving *and guiding rule;* and to address oneself to the rule side of the puzzle is of necessity both to look back upon the heritage of doctrine and also to look forward into prospective consequences and prospective further problems — and to account to each . . . . [T]he immediate equities fall into a wider, paler frame which renders it much easier both to feel and to see how much and what parts of them are typical and so are proper shapers of policy, how much and what part on the other hand is too individual for legal cognizance or appeals rather to sentimentality than to the sensitivity and sense proper to a legal-governmental scheme." LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 44 (1960).

25. See charts XIII-XVIII. Most of the data contained in the charts is based on the cases reported in volumes thirty-three through thirty-six of the New Jersey Reports. Where the 1961 Report of the Administrative Director of the Courts of New Jersey contained relevant data, it was the source cited rather than the reports. Since the period covered in volumes thirty-five and thirty-six of the New Jersey Reports is somewhat longer than that of the Report of the Administrative Director of the Courts, there is no numerical correlation between the two sets of data.

cases brought in the trial courts.[26] The appellate jurisdiction of the supreme court is limited as far as mandatory jurisdiction goes, but broad in terms of permissive jurisdiction. Appeals may be taken to the supreme court:

> (a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;
>
> (b) In causes where there is a dissent in the Appellate Division of the Superior Court;
>
> (c) In capital causes;
>
> (d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts; and
>
> (e) In such causes as may be provided by law.[27]

The New Jersey Supreme Court not only has broad discretionary power in determining the cases it will hear, but it is vested with rule making power in the area of practice and procedure. The New Jersey Constitution of 1947 provides: "The Supreme Court shall make rules governing the administration of all courts in the state and, subject to law, the practice and procedure in all such courts."[28] At its first meeting in 1947, the new supreme court agreed to use the federal rules as a model for the New Jersey rules. This decision was made in light of the comprehensive scope of the federal rules and their use and interpretation for a decade.

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26. N.J. RULES 2:2-1:

"Appeals in all causes may be taken to [the appellate division] from final judgments:

(a) In causes determined by the trial divisions of this court;

(b) In causes determined by the county courts;

(c) In causes civil determined by the county district courts;

(d) In causes determined by the juvenile and domestic relations courts, except bastardy proceedings . . . .

(g) In such causes as may be provided by law."

27. See N.J. CONST. art. VI, § 5 (1947), implemented by N.J. RULE 1:2-1.

28. N.J. CONST. art. VI, § 20. The phrase, "subject to law," was first construed in the famous case of Winberry v. Salisbury, 5 N.J. 240, 73 A.2d 905, *cert. denied*, 340 U.S. 877 (1950). Chief Justice Vanderbilt, writing for the majority, held that the phrase, "subject to law" referred to substantive law, not legislation concerning practice and procedure. Thus, the New Jersey Supreme Court is vested with power to make rules in four areas: (1) rules governing the administration of all courts in the state; (2) rules in practice and procedure in all courts, subject to substantive law; (3) rules governing the admission and practice of attorneys; (4) rules concerning practice and procedure in respect to former prerogative writs.

In Ohio, it was former Chief Justice Weygandt's opinion, in a letter to Judge Gilmore of the Common Pleas Court of Preble County, that: "Under the Constitution of Ohio the Supreme Court has no control over the rule-making power of other courts except through the usual testing process of proceedings in error. You are therefore at liberty to promulgate your court rules in the usual manner without first submitting them to this court for approval." 8 OHIO BAR 447-48 (1935). Justice Weygandt relied on his opinion in Meyer v. Brinsky, 129 Ohio St. 371, 195 N.E. 702 (1935). The *Meyer* case was relied on in Brown v. Mossop, 139 Ohio St. 24, 37 N.E.2d 598 (1941). It is debatable whether the Ohio Constitution required such a limited interpretation. Judicial rule-making power is set forth in OHIO REV. CODE §§ 2503.36, 2505.45, 2501.08, 2101.04, and 2301.04. Section 2101.04 provides, *inter alia:* "In order to maintain regularity and uniformity in the proceedings of all the probate courts, the supreme court may alter and amend such rules and make other rules."

As a result, on September 15, 1948, a new set of New Jersey rules, based on the federal rules, became effective. Periodic revisions and amendments were made to stabilize the rules and increase their utility. The most recent general revision of the rules became effective on September 9, 1953, and by June of 1954, rule changes had become primarily technical.

To understand the rule-making power in New Jersey, the Ohio practitioner should be aware of the function of the judicial conference.

> There shall be a judicial conference to consider improvements of procedure in the courts, to consider and recommend legislation and to exchange ideas with respect to the improvement of the adminstration of justice . . . . (d) the Supreme Court shall appoint such committees as it shall deem necessary or desirable . . . . (g) the Administrative Director [of the courts] shall serve as secretary . . . .[29]

The judicial conference holds two sessions annually, one in the spring and one in the fall. Throughout the year, the Office of the Administrative Director works closely with the various standing committees, especially the committee on the rules.[30] It assists in drafting proposed rules. If the proposals of the judicial conference are substantive in nature, they are put in bill form and referred to the legislature by the Administrative Director.

Another important factor in the administration of the New Jersey judicial system is the assignment judge.[31] His duties include:

> charging the grand jury, the assignment of cases in the Superior Court and County Court in the county and . . . the orderly administration of civil and criminal justice in all courts within the county subject to the direction in administrative matters of the Chief Justice.[32]

Ordinarily there is a high degree of rapport between the assignment judge

29. N.J. RULE 1:23-1. The New Jersey judicial conference is similar in conception to the Ohio Judicial Council. See *supra* note 1. To date the statistical information available on the work of the courts published by the council has been sparse.

30. The Administrative Director's Office essentially engages in collection and analysis of court business, assignment of judges, calendar control, preparation of the budget for the courts, supplying information, and publication of opinions. See McConnell, *The Administrative Office of the Courts of New Jersey,* 14 RUTGERS L. REV. 290 (1960).

31. For an interesting analysis see Del Tufo, *An Assignment Judge,* 15 RUTGERS L. REV. 179 (1961). For the importance ascribed to the assignment judge by Justice Vanderbilt see Vanderbilt, *The Record of the New Jersey Court in the Seventh Year under the Constitution of 1947,* 10 RUTGERS L. REV. 397, 400 (1955).

32. N.J. RULE 1:29-1. In Ohio, the chief justice of the supreme court may assign judges of the courts of common pleas from one county to another when an unusual number of cases have accumulated in a court of common pleas of a county. OHIO REV. CODE § 2503.04.

The Code also provides for the selection of a chief justice of the courts of appeal. OHIO REV. CODE § 2501.03. The chief justice, upon request by the presiding judge of an appellate district and upon being satisfied that the business of the district requires it, can assign judges from other districts to the requesting district. OHIO REV. CODE § 2501.14.

Each county having more than two judges of the court of common pleas has a chief justice. The chief justice has the general superintendence of the business of the court and classifies and distributes it. OHIO REV. CODE § 2301.04.

and the chief justice. This might be due to the fact that the chief justice personally appoints the assignment judges.

The unique feature of New Jersey appellate practice is expressed in New Jersey Rule 1:10-1:[33]

33. The New Jersey rule is not unique in theory, but rather in its extensive use by the court. N.J. RULE 1:10-1A provides: "Where an appeal is pending unheard in the Appellate Division and all briefs have been filed any party thereto may serve and file with this court within 5 days of the filing of the last brief, a motion for certification."

28 U.S.C. § 1254 provides: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party of any civil or criminal case, before or after rendition of judgment or decree."

United States Supreme Court Rule 20 provides: "A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement by this court."

There is great similarity between the New Jersey certification rules and the federal rules for certiorari. However, Chief Justice Vanderbilt warned that, "however closely the text of our rules may resemble the language of Federal Rules, state precedents and the conditions which uniquely affect our own system of courts will be more influential than the decisions of federal tribunals. The landmarks developed by the United States Supreme Court in determining whether certiorari will be granted must, therefore, be used with great caution in deciding whether certification should be requested by our own Supreme Court." SCHNITZER, THE NEW PRACTICE 343-44 (1949).

Needless to say, this would be equally true in Ohio.

Rule 20 was used recently in Turner v. City of Memphis, 369 U.S. 350 (1962) (desegregation case); United States v. Thomas, 361 U.S. 950 (1960); Aaron v. Cooper, 357 U.S. 566 (1958) (school integration plan); and Wilson v. Girard, 354 U.S. 524 (1957) (jurisdiction).

An Indiana provision provided: "Whenever in the opinion of the Supreme Court there is a disparity between the number of the cases pending in the Appellate Court and the number pending in the Supreme Court, the Supreme Court may make an order stating the number of cases that should be transferred from the appellate court to the Supreme Court, and the clerk of said court shall thereupon transfer from the docket of the Supreme Court the required number of cases. In making such transfer, the clerk shall begin with the oldest undistributed case on the docket of the division of said appellate court, and shall take the required number in their order on said docket." IND. STAT. ANN., tit. 4, § 218.

This provision was merely a makeweight for equalizing the workload of the Indiana Supreme Court and appellate courts. In that sense, it failed to further the decision of significant cases by the supreme court. For a typical case see *In re* Barger's Estate, 114 Ind. App. 129, 51 N.E.2d 104 (1943). This provision was abrogated September 6, 1943, by Indiana Supreme Court Rule 2-23.

The California Constitution of 1879, as amended November 8, 1949, art. VI, § 4d provides: "The Supreme Court may order any case in a district court of appeal transferred to it for decision. An order under this section may be made before decision by the district court of appeal or thereafter up to the time such decision becomes final . . . ."

This provision has not been implemented. Mr. Richard A. Frank, Deputy Director of the Administrative Office of the Courts of California, informs me that the supreme court does occasionally transfer a case under this provision when it determines that a case pending in a district court of appeal is of general importance. Apparently several transfers to the California Supreme Court before decision in the court of appeals are made each year. No transfers of this type appear in the California cases published in volumes fifty-six and fifty-seven of California Reports 2d (cases decided May 29, 1961 — June 12, 1962). Of course, with its highly flexible appellate system there is no necessity for transfer. See CAL. CONST. art. VI, § 4. "For the most part [the California Supreme Court's] . . . selection is discretionary. Even though it has constitutional appellate jurisdiction in probate matters, in all cases in equity, and in all cases involving title to real property except such as arise in municipal and justice courts, these are customarily transferred to the seven intermediate District Courts of Appeal. Moreover, it is now the custom to transfer most petitions for writs of mandamus,

> Certification on Motion of the Court.
>
> (a) Certification shall be allowed where the court of its own motion certifies a cause or class of causes for appeal.
>
> (b) All appeals taken in causes where the indictment is for murder or any other capital offense are hereby certified directly to this court.

Certification by the court constitutes approximately 41 per cent of the activity of the court, certification on petition 28 per cent, and mandatory appeals (including automatic certification in capital case) 30 per cent.[34] In addition, there are dissenting opinions filed in 12 per cent of the certification cases as opposed to only 3 per cent filed in mandatory appeal cases.[35] This clearly demonstrates that the issues involved in cases certified by the court are of significance to the community and troublesome enough to present persuasive grounds for alternative decisions.

The cases where certification is granted by petition are equally significant. But an additional problem arises where petitions for certification are involved. What standards are to guide the petitioner in deciding whether to apply for certification of a case? Where the petition is for certification directly from the judgment of a trial court, the supreme court suggests certification will be granted:

> (a) Where a substantial question arises under the Constitution or a statute of the United States or of this State, which is of general public importance and which urgently requires adjudication by this court.
>
> (b) Where questions of great public importance are involved which urgently require prompt adjudication.[36]

Three additional grounds exist when the petition is for certification of an appeal pending but unheard in the appellate division:

> (1) Where the appeal presents a substantial question which has not been, but should be settled by the court of last resort of this state;
>
> (2) Where the appeal presents a substantial question the same as or similar to a question presented on another appeal pending in this court;
>
> (3) Where the appeal presents a question within the provisions of Rule 1:10-3.[37]

When a case meets the requirements of the above rules, it is a proper

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prohibition, and certiorari to these courts. Conversely, the Supreme Court retains tax cases and election matters of state-wide concern, and it exercises exclusive jurisdiction in the review of automatic appeals in death penalty cases, Public Utilities Commission decisions, State Bar recommendations, and over coram nobis applications when the criminal judgments were previously affirmed in the Supreme Court. Thus, almost all appeals are first decided in these intermediate courts." Traynor, *Some Open Questions on the Work of State Appellate Courts*, 24 U. CHI. L. REV. 211, 213 (1957). For background material regarding the California transfer rules see Witkin, *New California Rules on Appeal*, 17 SO. CAL. L. REV. 232, 235-38 (1944).

34. See chart XIV. Note the percentages for the 1961-1962 term in chart XV.

35. See chart XIV.

36. N.J. RULE 1:10-3.

37. N.J. RULE 1:10-1. The language of these rules is derived from United States Supreme Court Rule 19.

case for appellate review by the highest state appellate tribunal. On this point few would disagree. But the inevitable *quaere,* surely follows: Is not the examination of each petition too time consuming? To date, it has not been. This is partially due to the stringency of the standards propounded and the limitation of the brief on motion for certification to three pages.[38] Another inhibiting factor is the low probability of succeeding on the motion. Only six cases brought to the supreme court by a petition for certification prior to a hearing in the court of appeals were decided between June 6, 1960, and February 26, 1962.

However, the court on its own motion certifies a significant number of cases. These cases, in most instances, would ultimately reach the supreme court on appeal. The certification procedure obviates the need of a time consuming intermediate hearing, decision, written opinion, and further filing of briefs and records.

Where a party petitions for certification after judgment in the court of appeals New Jersey Rule 1:10-2 applies:

> Certification to the Appellate Division is not a matter of right, but of sound judicial discretion, and will be allowed on final judgments only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) Where the Appellate Division has decided a question of substance not theretofore determined by a court of last resort of this State, or has decided it in a way probably not in accord with applicable decisions of such court.
>
> (b) Where the decision under review is in conflict with any other decision of the Appellate Division.
>
> (c) Where the judges of the Appellate Division concur in result, but are unable to agree upon a common ground of decision.
>
> (d) Where the Appellate Division has decided an important question of law which has not been, but should be settled by this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower tribunal as to call for an exercise of this court's supervision.
>
> (e) Where the Appellate Division has decided a question of substance relating to the construction or application of a statute of this State, which has not been, but should be settled by this court.

Ohio has a high rate of dismissals of appeals for the failure of the parties to present a debatable constitutional question. New Jersey has a high denial rate for petitions for certification.[39] Ohio has an even higher

38. N.J. RULE 1:10-1A.

39. During the 1961-1962 term 70% of petitioner's motions for certification were denied. This is far higher than in the early years of the last decade. See chart XV. During the period of the study reflected in chart XIV, there was a fairly steady increase in the percentage of petitions denied:

June 6, 1960-Aug. 6, 1960	62% denied.
Sept. 19, 1960-Nov. 21, 1960	67% denied.
Dec. 5, 1960-Feb. 27, 1961	68% denied.

denial rate.[40] In an effort to discover which grounds were most effective, a representative sample was taken of sixty-two New Jersey petitions for certification (all dealing with petitions after judgment in the court of appeals). The grounds urged and decision of the supreme court on the petitions are set forth in chart eighteen.[41] Unfortunately, the results were not very enlightening. Ground one was most frequently urged, ground three was not urged at all. It might be inferred that those petitions employing the shotgun approach, *i.e.*, based on multiple grounds, are frequently denied. This indicates a lack of meritorious application of any one ground to the petitioner's case.

There are noticeable trends in New Jersey Supreme Court opinions. The court writes fewer full opinions, relying more on per curiam opinions to dispose of foredoomed cases.[42] Further, the decrease in dissenting opinions[43] probably represents Chief Justice Weintraub's ability to reconcile the views of the members of the court. The New Jersey Supreme Court indeed manifests a "*known bench*, where the strain of the opinion to be *whole-group opinion* (typically enough with the chief at work if cleavage should threaten) climaxes the whole process of a group deciding."[44]

March 6, 1961-May 23, 1961	74% denied.
June 5, 1961-July 28, 1961	56% denied.
Sept. 25, 1961-Nov. 20, 1961	75% denied.
Dec. 4, 1961-Feb. 26, 1962	90% denied.

The same problem exists in the federal system. During the 1961 term only 13.5% (89) petitions for certiorari were granted. See *The Supreme Court, 1961 Term*, 76 HARV. L. REV. 75, 81 (1962). See also *supra* note 3.

40. For 1960 the denial rate was 80.7%. See chart XIX.

41. See chart XVIII. In New Jersey a petition is granted on the affirmative vote of three or more justices. N.J. RULE 1:10-13. There is ordinarily no oral argument, but it may be requested in a complex case. N.J. RULE 1:10-1A. See WALTZINGER, 1 N.J. PRACTICE SERIES 133 (1954).

42. See chart XV. See also *supra* note 21. There are four memorandum opinions based on the "opinion below" in volume thirty-five of New Jersey Reports. In one such opinion, the well-reasoned opinion below is set forth *in toto*. Western Elec. Co. v. Hussey, 35 N.J. 250, 172 A.2d 645 (1961). In the other three cases the approximate language of the supreme court reads: "The judgment is affirmed for the reasons expressed in the opinion of Judge X in the Appellate Division." Dixon v. Holley & Smith, 35 N.J. 594, 174 A.2d 477 (1961); Shaw v. Mayor & Twp. Comm., 35 N.J. 595, 174 A.2d 474 (1961); and Green v. Bell Cleaners, 35 N.J. 596, 174 A.2d 474 (1961). Both practices are recommended by Professor Llewellyn. On the use of the opinion below see, LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 318-19 (1960). On the use of a memorandum opinion see LLEWELLYN, *op. cit. supra* at 312 where he suggests the following language: "The case falls within the reason of X v. Y," instead of "affirmed on the authority of X v. Y."

43. See chart XV.

44. LLEWELLYN, *op. cit. supra* note 42, at 224. The New Jersey judicial system today substantially achieves the goals Justice Weintraub articulated in 1958: "The law must be stable so that the citizen may act with assurance. Yet the law may not be static. It must move with events, else it will petrify and burden the society it is meant to serve.

"[C]onsideration should be given to the extent of reasonable reliance by the public upon prior decisions because the unfairness to those who relied may outweigh the benefit of the change, especially if there is also present an overriding social need for stability. Thus a court should be loathe to reconsider, for example the basic law of real property. On the other

The statistical picture emerges of a court selecting the cases it feels are significant or decided wrongly below, with a strong chief justice who reconciles conflicts with a concomitant high degree of unanimity, and a judicious use of per curiam opinions, with time to adequately research and write opinions in the significant cases.[45]

New Jersey has achieved a high degree of flexibility and efficiency in the operation of its courts, thanks to the combined efforts of the supreme court, judicial conference, administrative office, and assignment judges.[46]

In view of the increases in work load and litigation in the trial and intermediate appellate courts, it is anomalous to discover that the New Jersey Supreme Court today disposes of less cases than it did ten years ago.[47] The judges write fewer opinions, the average is fourteen a judge.[48] The average length of an opinion is ten pages (average length of majority opinion in Ohio: 3.64 pages). The opinions are generally well written and admirably satisfy all the requirements previously discussed. This in part may be attributed to the power of selectivity over cases heard in the supreme court.

Under the New Jersey Constitution of 1947, article 6, section 5, the mandatory appellate jurisdiction of the court is limited; its permissive jurisdiction broad. The committee on the judiciary reported to the constitutional convention of 1947:

> There was some difference of opinion as to whether the jurisdiction of [the supreme court] should be selective and limited to important cases, including constitutional questions and capital offenses, or whether it should take appeals comprehensively as [did] . . . the court of errors and appeals. It was feared by some that a restricted jurisdiction might leave the Justices idle, while others believed that a plenary calendar of appeals might overburden them since approximation of future judicial business is at best a prophecy, the committee decided to err on the side of caution. By making the new supreme court's appellate jurisdiction

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hand the element of reliance in the field of tort is small (failure to insure is about it) and hence in that area there is more leeway for conciliation with common sense. So also the retroactive impact of judicial legislation suggests a slow evolutionary accommodation. Dramatic thrusts into new areas must be left to the legislature." Weintraub, *Judicial Legislation,* 81 N.J. L. J. 545, 549 (1958).

45. See the random sample of New Jersey Supreme Court opinions in Lewis, The Judicial Process and Situational Sense (1962) (unpublished thesis in Columbia Law School Library).

46. This efficiency is practically a survival requirement. The Report of the Administrative Office of the Courts for 1961 indicates that although the population has increased only 25%, the number of civil cases on the calendar in the county courts and law division of superior court has increased 91%. There are increases reported as well in the county district courts (65%), and in the number of criminal indictments filed (45%). The business of the juvenile and domestic relations courts has increased in the same period by 252%.

47. See chart XV. In 1954-1955, 186 appeals were disposed of as contrasted with 139 in the 1961-1962 term.

48. See chart XVII. The present New Jersey Supreme Court is of average productivity in regard to sheer quantity of opinions written.

> selective, the court is assured of an adequate opportunity to hear, consider, and decide every case that comes before it.[49]

One member of the judiciary committee, Professor Morris Schnitzer, argued that an appeal as of right should be allowed where two courts reach opposite conclusions in the same case.[50] At this juncture it is apropos to note that there is some merit to Professor Schnitzer's suggestion. During the twenty-one month period reflected in chart fourteen, the percentage of reversals by the supreme court of cases in which the lower courts reached antipodal conclusions was 70 per cent, whereas in other cases it was only 48 per cent.[51] In those cases coming before the court as of right because there was a dissent in the appellate division, the percentage of reversals was only 20 per cent. If the rate of reversal is any indication of significance, then reversal by the appellate division, rather than a dissent, should be the ground for appeals as of right. But 39 per cent of the cases before the appellate division were reversed or modified, whereas in only 1 per cent of the cases dissenting opinions were filed. An appeal as of right in each case of reversal by the appellate division would inundate the supreme court.

PROPOSAL FOR THE SIMPLIFICATION OF JUDICIAL ADMINISTRATION IN OHIO

The Ohio Supreme Court is compelled to decide cases of low significance as a result of present Ohio appellate statutes. It disposes of these cases effectively with memorandum dismissals and per curiam opinions. But this task is esurient of precious time better devoted to the difficult, troublesome cases where conflicting interests of a significant nature must be resolved with the least possible friction. An exponentially increasing population with a correlative increase in litigation, ultimately creates an impossible situation for a state supreme court with such broad mandatory appellate jurisdiction. Faced with inadequate appellate consideration of the social, economic, and legal environment of a case, resulting in a poor decision accompanied by a confusing and obscure opinion, the early Georgia appellate structure might be preferred.[52]

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49. 2 STATE OF N. J. CONSTITUTIONAL CONVENTION OF 1947 1183-84.

50. "Where two courts reach opposite conclusions in the same case it seems to me that an appeal as of right to the highest appellate authority is warranted. In practice, however, the supreme court may tend to certify such cases more liberally than cases in which the lower courts agreed upon the result." SCHNITZER, THE NEW PRACTICE 335 (1949).

This principle is embodied in N.Y. CONST. art. 6, § 3b(1). See also N.Y. CIVIL PRACTICE LAW § 5601 (Effective Sept. 1, 1963); FINAL REPORT OF THE ADVISORY COMMITTEE ON PRACTICE AND PROCEDURE § 5601 (a), A-204 (1961), for an attempted modification.

51. The data collected in Ohio does not validate the New Jersey experience. See chart IV.

52. From 1776 to 1846 there was no appellate court in Georgia. For a fascinating exposition of this period see Lamar, *A Unique and Unfamiliar Chapter in Our American Legal History*, 10 A.B.A.J. 513 (1924).

Last year the Ohio Supreme Court disposed of 232 cases, considered 319 motions to certify, and undoubtedly handled many other orders and motions. Contrast this with the 139 cases and 125 petitions for certification disposed of during the 1961-1962 term by the New Jersey Supreme Court. This should indicate the need for change in Ohio.

Not too long ago Louisiana recognized a similar problem. The judicial council of Louisiana observed that: "During the 1955-56 term, the Court wrote 349 opinions, disposing of 299 cases. It considered 157 applications for rehearing, and 257 applications for writs."[53] Louisiana not only recognized the problem but did something about it. In 1958 the volume of appeals in the Louisiana Supreme Court was reduced by 80 per cent.[54]

In Pennsylvania a recent proposal reads:

> The Supreme Court shall be the highest court of the commonwealth and shall have final appellate jurisdiction. It shall have no original jurisdiction except as may be expressly provided in this Constitution. *It may assume jurisdiction of actions pending in any other court at any stage of the proceedings.* It shall have the power to issue all writs necessary or appropriate in aid of its appellate jurisdiction. *Appeals from final judgments of the Common Pleas Court shall lie as of right directly to the Supreme Court only in cases of judgments imposing sentences of death or life imprisonment.* In all other cases, appeals permitted by law shall

53. Quoted in Tucker, Tate & McMahon, *Appellate Reorganization in Louisiana,* 19 LA. L. REV. 287 (1959).

54. The court's appellate jurisdiction was reduced to:

"(1) Cases in which the constitutionality or legality of any tax, local improvement assessment, toll or impost levied by the state or by any parish, municipality, board or subdivision of the state is contested;

(2) Cases in which an ordinance of a parish, municipal corporation, board or subdivision of the state, or a law of this state has been declared unconstitutional;

(3) Cases in which orders of the Public Service Commission are in contest, as is provided in Article VI, Section 5 of this Constitution;

(4) Appealable cases involving election contests, but only if the election district from which the suit or contest arises does not lie wholly within a court of appeal circuit; and

(5) Criminal cases in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed." LA. CONST. art. VII, § 10 cited and discussed in Tucker, Tate, & McMahon, *supra* note 53, at 290.

The authors were encouraged by the revision, expressing optimism for the future of the Louisiana judicial system. "Viewed in the persepective of long-range hopes of bench and bar for further improvement of a judicial system which is basically sound, the adoption of the appellate revision amendment signifies a number of things. It demonstrates the potentialities of the Judicial Council as the coordinating force spear-heading a broad program of judicial reform. It demonstrates the efficacy of enlightened and disinterested bar association leadership at both the state and local levels. It signifies the tremendous influence of the office of Chief Justice of the Supreme Court, when exerted by an incumbent who is keenly interested in the improvement of the administration of justice. Lastly, it demonstrates the fact that an appeal for improvements in the administration of justice can be made successfully, both to the legal profession and to an enlightened public opinion, when convincing proof of the need is supported by accurate factual data, and the solution of the problem has been developed by thorough discussion and the objective cooperation of all segments of the legal profession in Louisiana." Tucker, Tate, & McMahon, *supra* note 53, at 293. For a recent appraisal see Fournet, THE REORGANIZATION OF THE LOUISIANA JUDICIAL SYSTEM, 17 SW. L.J. 78 (1963).

be assigned by the Supreme Court to such court as the Supreme Court shall by Rule prescribe.[55] (Emphasis added.)

On the basis of the statistical data in this general study several specific proposals for reform in the Ohio appellate system are manifest.

1. The mandatory appeal from the Board of Tax Appeals and the Public Utilities Commission to the supreme court should be abolished. This mandatory appeal in theory seems desirable because of the ostensible general importance of tax and rate cases. However, empirically, this cannot be substantiated. The statistical data indicates these cases are of low significance and summarily disposed of by the high court. In both instances, appeal should lie to the court of appeals. When cases of great public importance arise the supreme court could grant a motion to certify.

2. The mandatory appellate jurisdiction in the area of constitutional law should be retained. However, some device, such as a short jurisdictional statement, should be required to obviate the necessity of the court perusing the record to ascertain whether the appeal is meritorious.[56]

3. An appeal as of right in capital cases should be permitted directly from the trial court. Where a life hangs in the balance the ultimate determination should rest with the high court.

4. In all other cases the supreme court should have full discretion to determine which cases it will hear.[57]

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55. *Project Constitution*, 34 PA. BAR ASS'N. Q. 147, 186-87 (1963). The criticism levelled at the present Pennsylvania judicial system could appropriately be applied to some other extant state systems: "Our present judicial system in Pennsylvania suffers from a number of major deficiencies: (1) Structural deficiencies in the organization of its courts; (2) An outmoded, archaic minor court system; (3) Lack of efficient supervision and administration over the non-judicial aspects of the business of the courts; (4) Inefficient use of the judicial personnel; (5) A system of selection of judges which has made them dependent on political leaders for their appointment, election and continuance in office . . . ." SCHULMAN, TOWARD JUDICIAL REFORM IN PENNSYLVANIA (*circa* 1960) quoted in *Project Constitution, supra* at 282.

56. Presently there is no such requirement. See OHIO SUP. CT. R. II. On a motion to certify the court does require: "A short statement of the case, showing how the questions arise, and an argument on behalf of the appellant, which should be characterized by clarity and conciseness and be supported by citation of authorities on which appellant relies." OHIO SUP. CT. R. VIII, § 3(c).

But § 6 of Rule VIII provides: "Either party may file twelve copies of a printed or non-printed brief upon the motion [to certify], which copies may thereafter be used as briefs upon the merits of the case . . . should the motion to certify the record be granted."

This later provision casts doubt on the "brevity" of the statement referred to in § 3(c). This even though the court recently stated:

"If a party believes his cause to be one of public or great general interest, he may seek leave of this court to hear his cause by filing with the clerk a motion to certify the record . . . . It follows, of course, that *the sole issue for determination* at the hearing upon such motion is whether the cause presents a question or questions of interest primarily to the parties. Whether the question or questions argued are in fact ones of public or great general interest rests within the discretion of the court. In the event this court determines that the cause presents a question of that character, the motion to certify will be allowed, and the cause will be docketed for a subsequent hearing on the merits." Williamson v. Rubich, 171 Ohio St. 253, 254, 168 N.E.2d 876, 877 (1960). Discussed in Comment, 30 U. CINC. L. REV. 383 (1961).

57. The standard of N. Y. CONST. art. 6, § 3(b)(1), discussed in note 50 *supra*, is rejected on the basis of the data reported herein. See discussion in text at 519 and charts IV and V.

5. In addition, there should be authorization for certification on the court's own motion, or on petition of a party, of cases after judgment of the trial court or when pending in the court of appeals.[58]

A workable model is available for implementing these proposals. The New Jersey Supreme Court has "new frontiered," providing impressive evidence of the effective flexibility of its certification practice. It is notable that Pennsylvania's recent proposals tend toward the New Jersey position.

Aside from the fact that such a system has worked well in New Jersey, it makes good sense intrinsically. Where there is an error committed in the trial court, why is a multiple level appeal necessary? The court of appeals can effectively handle trial court miscalculations. A reversal by the intermediate appellate court will deter proliferation of error as effectively as a reversal by the high court.

Where a case is of first impression, or a decision by the supreme court will unify divergent views of the law, provide guidance to developing areas of the law, or affect a substantial portion of the population, the supreme court will undoubtedly grant a motion to certify and hear the case. The permissive appeal procedure does not bar the *proper* case from review by the supreme court, rather it bars those that are *improper,* freeing time for reflection, research, discussion, and legal precept building so necessary for disposition of the proper cases.

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58. Instead of granting a hearing on a motion to certify, the court might rely on the *short* brief filed with the motion, thereby conserving precious time. Rather than requiring a majority vote to allow the motion, the court might adopt a rule that a minority of three could grant a motion to certify, thereby increasing the probability of a hearing in significant cases. Under such a rule if three members of the court voted to allow the motion to certify the case would be heard. On the "rule of four" in United States Supreme Court certiorari practice see Leiman, *The Rule of Four,* 57 COLUM. L. REV. 975 (1957).

Justice Frankfurter contends: "Even though a minority may bring a case here for oral argument, that does not mean that the majority has given up its right to vote on the ultimate disposition of the case as conscience directs. This is not a novel doctrine. As a matter of practice, members of the Court have at various times exercised this right of refusing to pass on the merits of cases that in their view should not have been granted review.

"This does not make the 'rule of four' a hollow rule. I would not change the practice. No Justice is likely to vote to dismiss a writ of certiorari as improvidently granted after argument has been heard, even though he has not been convinced that the case is within the rules of the Court governing the granting of certiorari." Rogers v. Missouri Pac. R.R., 352 U.S. 500, 528 (1957) Frankfurter, J., dissenting).

Williamson v. Rubich, 171 Ohio St. 253, 168 N.E.2d 876 (1960), appears to depart from the justice's prophecy.

Liaison between the chief justice and the presiding judges of each of the ten districts would in effect also retain the advantage of the practice of certification by the appellate division. Indeed, such an arrangement might be required for effective certification of cases on the court's own motion. Unfortunately, there is a constitutional impediment to adoption of certification before judgment in the court of appeals. OHIO CONST. art. IV, § 2 provides *inter alia*: "In cases of public or great general importance the supreme court may . . . direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the *judgment* of the court of appeals." (Emphasis added.)

If the constitutional objection is not circumvented, retention of the certification practice would be desirable. The judges of the court of appeals have used their power sparingly. The cases so certified have been, for the most part, significant. See chart IV.

Justice Cardozo long ago candidly admitted that courts do legislate, even where statutes are involved.[59] And the "process, being legislative, demands the legislator's wisdom."[60] Each decision of import directs the movement of our society. Too often the consequences of these decisions are not thought out, the *making* of the decision being all important. The *how and why* are equally weighty.

In any case, where the law to be applied is not clear a judge must make

> (1) the effort to diagnose the significant problem involved, and (2) the effort to mark out the life-situation which gives rise to the problem. Distinct from either is (3) the effort to determine an, or the most appropriate, line of solution or treatment, and then (4) the specific prescription which may be called for . . . . Only when there is clarity at each step, in both line and reason does the resultant rule become the clear working tool the [grand] style demands and labors to produce.[61]

An effective modern appellate system cannot instill wisdom. However, it can provide more time to state supreme court judges to reach appropriate decisions, accompanied by opinions that clarify and integrate prior precedent and provide a guide for the solution of recurring situation-types prospectively. Ohio, it is submitted, needs such a system.

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59. For an irrefutable example of judicial legislation see James v. United States, 366 U.S. 213 (1961), a rare example of prospective overruling by the United States Supreme Court.

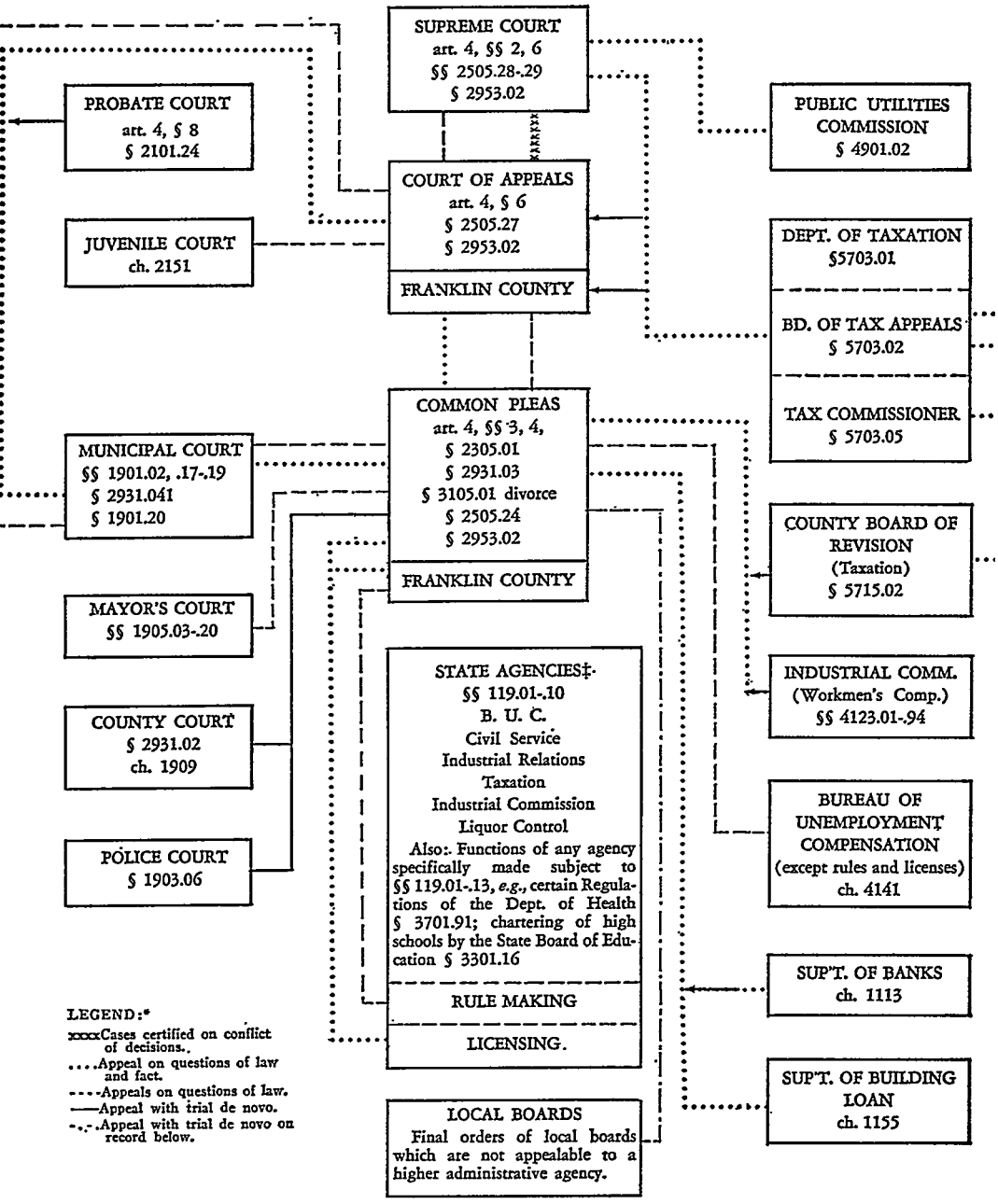
60. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 115 (1921).

61. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 44 (1960).

CHART I

OHIO JUDICIAL SYSTEM†

1963



†See following page.
‡See following page.
*See following page.

†Citations are to the jurisdictional authorizations in the Ohio Constitution and the Revised Code. Chapter citations indicate that the jurisdictional authorizations are pervasive throughout the chapter.

‡119.01. Definitions.

As used in sections 119.01 to 119.13, inclusive, of the Revised Code: (A) "Agency" means, except as limited by this division, any official, board, or commission having authority to promulgate rules or make adjudications in the bureau of unemployment compensation, the civil service commission, the department of industrial relations, the department of liquor control, the department of taxation, the industrial commission, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to sections 119.01 to 119.13, inclusive, of the Revised Code, and the licensing functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses. Sections 119.01 to 119.13, inclusive, of the Revised Code do not apply to the public utilities commission, nor do they apply to actions of the superintendent of banks, the superintendent of building and loan associations, and the superintendent of insurance in the taking possession of, and rehabilitation or liquidation of, the business and property of banks, building and loan associations, insurance companies, associations, reciprocal fraternal benefit societies, and bond investment companies, nor to any action that may be taken by the superintendent of banks under sections 1111.12, 1113.02, and 1113.14 of the Revised Code. Sections 119.01 to 119.13, inclusive, of the Revised Code do not apply to actions of the industrial commission under sections 4123.01 to 4123.94, inclusive, of the Revised Code. Sections 119.01 to 119.13, inclusive, of the Revised Code do not apply to actions of the bureau of unemployment compensation except those relating to the adoption, amendment, or rescission of rules, and those relating to the issuance, suspension, revocation, or cancellation of licenses.

*Various types of review are included under the rubric "Appeal on questions of law and fact." For example, the supreme court is authorized to reverse, vacate, or modify "unreasonable or unlawful" orders or decisions of the Board of Tax Appeals and Public Utilities Commission. An appeal to the court of common pleas from the Industrial Commission, involving a claim for compensation, is to proceed "in accordance with the rules of civil procedure" and is essentially a trial de novo. See SKEEL, OHIO APPELLATE MANUAL §§ 33, 75 (1958). Both types of review are denominated "law and fact" in Chart I for the sake of simplicity. *Chart I is only a simplified graphic representation of the general appellate structure in Ohio.*

CHART II

JURISDICTION OF APPELLATE COURTS IN OHIO

§ 1. In whom judicial power vested.

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.
OHIO CONST. art. IV, § 1.

§ 22. Supreme court commission.

A commission, which shall consist of five members, shall be appointed by the governor, with the advice and consent of the senate, the members of which shall hold office for the term of three years from and after the first day of February, 1876, to dispose of such part of the business then on the dockets of the supreme court, as shall, by arrangement between said commission and said court, be transferred to such commission; and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in said court; and the members of said commission shall receive a like compensation for the time being, with the judges of said court. A majority of the members of said commission shall be necessary to form a quorum or pronounce a decision, and its decision shall be certified, entered, and enforced as the judgments of the supreme court, and at the expiration of the term of said commission, all business undisposed of shall by it be certified to the supreme court and disposed of as if said commission had never existed. . . . The general assembly may, on application of the supreme court duly entered on the journal of the court and certified, provide by law, whenever two-thirds of such (each) house shall concur therein, from time to time, for the appointment, in like manner, of a like commission with like powers, jurisdiction and duties; provided, that the term of any such commission shall not exceed two years, nor shall it be created oftener than once in ten years.
OHIO CONST. art. IV, § 22.

§ 18. Powers and jurisdiction.

The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.
OHIO CONST. art. IV, § 18.

JURISDICTION OF THE OHIO SUPREME COURT

CONSTITUTION	IMPLEMENTING STATUTES
§ 2. The supreme court.	
It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo,	§ 2731.02. Courts authorized to issue writ; contents. The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested. Such writ shall contain a copy of the petition, verification, and order of allowance.

CHART II (continued)

CONSTITUTION	IMPLEMENTING STATUTES
and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state,	§ 2505.28. Appeal on questions of law to supreme court. A judgment rendered or a final order made by a court of appeals or a judge thereof, court of common pleas or a judge thereof, or probate court may be reversed, vacated, or modified by the supreme court by an appeal on questions of law, except cases in which the judgment of the court of appeals is final, as provided by Section 6 of Article IV, Ohio Constitution, and such judgment shall not be subject to modification, vacation, or reversal. § 2505.29. No appeal filed without leave of supreme court; exceptions. No appeal shall be filed in the supreme court unless such court or a judge thereof grants leave to file such an appeal. Such leave need not be obtained to file an appeal as to the judgment or final order of the court of appeals, or a judge thereof, in cases involving questions under the constitution of the United States, or of this state, in cases which originated in the court of appeals, and as to proceedings of administrative officers as may be provided by law. § 2953.02. Review of judgments. In a criminal case, including a conviction for the violation of an ordinance of a municipal corporation, the judgment or final order of a court or magistrate inferior to the court of common pleas, may be reviewed in the court of common pleas, and a judgment or final order of a court of record or officer inferior to the court of appeals may be reviewed in the court of appeals. A judgment or final order of the court of appeals involving a question arising under the Constitution of the United States or of this state may be appealed to the supreme court as a matter of right.
- - - - - - - - - - - -	
in cases of felony on leave first obtained,	Such right of appeal shall extend to felony cases in which the supreme court has directed the court of appeals to certify its record
- - - - - - - - - - - -	
and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law	

CHART II (continued)

CONSTITUTION	IMPLEMENTING STATUTES
In cases of public or great general interest the supreme court may, within such limitations of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals . . . . OHIO CONST. art. IV, § 2.	and in all other criminal cases of public or great general interest wherein the supreme court has granted a motion to certify the record of the court of appeals. . . .

JURISDICTION OF THE OHIO COURT OF APPEALS

§ 6. The appellate courts.	IMPLEMENTING STATUTES
§6. The appellate courts. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo,	See OHIO REV. CODE § 2731.02.
and such jurisdiction as may be provided by law to review, affirm, modify, set aside, or reverse judgments or final orders of boards, commissions, officers, or tribunals, and of courts of record inferior to the court of appeals within the district,	§ 2505.27. Appeal on questions of law to court of appeals. A judgment or final order made by a court of common pleas, a probate court, or by any other court of record, or by a judge of any such courts, may be reversed, vacated, or modified for errors appearing on the record, upon an appeal on questions of law, by the court of appeals having jurisdiction in the county wherein such court of record is located. Appeals in Criminal Cases. See OHIO REV. CODE § 2953.02.
and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to the court . . . . [W]henever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. . . . OHIO CONST. art. IV, § 6.	

CHART II (continued)

JURISDICTION OF THE OHIO COMMON PLEAS COURT

CONSTITUTION	IMPLEMENTING STATUTES
§ 4. Their jurisdiction. (Common Pleas) The jurisdiction of the courts of common pleas, and of the judges thereof, shall be fixed by law. OHIO CONST. art. IV, § 4.	See OHIO REV. CODE § 2731.02. § 2305.01. Jurisdiction in civil cases; trial transfer. The court of common pleas has original jurisdiction in all civil cases where the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts; and appellate jurisdiction from the decisions of boards of county commissioners, county courts, and other inferior courts in the proper county, in all civil cases, subject to the regulations provided by law. The court of common pleas may on its own motion transfer for trial any action in said court to any municipal court in the county having concurrent jurisdiction of the subject matter of, and the parties to, the action, if the amount sought by the plaintiff does not exceed one thousand dollars and if the judge, presiding judge, or chief justice of such municipal court concurs in the proposed transfer. Upon the issuance of an order of transfer, the clerk of courts shall remove to the designated municipal court the entire case file. Any untaxed portion of the common pleas deposit for court costs shall be remitted to the municipal court by the clerk of courts to be applied in accordance with section 1901.26 of the Revised Code; and the costs taxed by the municipal court shall be added to any costs taxed in the common pleas court. § 2505.24. Appeal on questions of law to court of common pleas. A judgment rendered or final order made by a judge of a county court or any other tribunal, board, or officer, exercising judicial functions, and inferior to the court of common pleas, may be reversed, vacated, or modified by the court of common pleas upon an appeal on questions of law.

CHART III

APPELLATE PROCEDURE FOR REVIEW OF DECISIONS OF COURTS AND AGENCIES IN

COURT or AGENCY	STATUTORY AUTHORIZATION	QUESTIONS ON REVIEW	REVIEWING COURT or AGENCY
Probate Court	§ 2101.42	Law; Law & Fact	Court of Appeals
Juvenile Court	§ 2151.52	Law	Court of Appeals
Municipal Court	§ 1901.30	Law; Law & Fact	Court of Appeals & Common Pleas
Mayor's Court	§ 1905.22	Law	Common Pleas
County Court	ch. 1921	Trial De Novo	Common Pleas
Police Court	§ 1903.06	Trial De Novo	Common Pleas
State Agencies Rule Making	§ 119.11	Law	Common Pleas Franklin C
Licensing	§ 119.12	Law & Fact	Common Pleas & Common Pleas Franklin C
Public Utilities Commission	§ 4903.12-.13	Law & Fact	Supreme Court
Dept. of Tax. Bd. of Tax App.	§ 5717.04	Law & Fact	Supreme Court or Court of Appeals
Tax Comm.	§ 5717.02	Law & Fact	Bd. of Tax Appeals
County Bd. of Revision (Taxation)	§ 5717.01	Law & Fact	Bd. of Tax Appeals or Common Pleas
Industrial Comm. Workmen's Comp.	§ 4123.19	Law & Fact	Common Pleas
Bureau of Unemployment Comp.	§ 4141.28(N)	Law	Common Pleas
Sup't. of Banks	§ 1113.02 § 1113.27	Law & Fact	Common Pleas
Sup't. of Building & Loan	§ 1151.18 § 1151.55 § 1157.03	Law & Fact	Common Pleas
Local Boards	§ 2506.01 § 2506.03	Trial De Novo on Record N.B. exceptions § 2506.03	Common Pleas

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Other sections of the OHIO REV. CODE, including §§ 2709.36, 3515.15, and 4123.06 provide for a direct appeal to the supreme court in certain circumstances. However, because of the infrequent use of such sections they are omitted from this analysis.

CHART IV

REVIEW OF CASES FROM THE OHIO COURT OF APPEALS 1962 TERM

Tribunal Antecedent to Court of Appeals	Disposition in Supreme Court			No. Cases with Dissenting Opinions	No. Cases with Dissenting Votes	No. Cas Decide Per Curi or Memoran Dispositi
	Affirmed	Reversed or Modified	Dismissed			
None (originated in the Court of Appeals)	10	5	5	1		14
Common Pleas	11	6	44	3	1	53
Probate Court	1		5	1		5
Municipal Court	2	1	6	1	1	7
Board of Tax Appeals			1			1
TOTAL	24	12	61	6	2	80
Common Pleas	5	16		2	1	2
Probate Court	3	5			1	1
Municipal Court	1	3				2
Board of Tax Appeals		1				1
TOTAL	9	25		2	2	6
Common Pleas	5	4			4	2
TOTAL	38	41	61	8	8	88

Significance			Disposition by Supreme Court of Cases Where Court of Appeals Reversed or Modified Decision of Antecedent Tribunal.			Disposition by Supreme Court of Where Court of Appeals Affirme cision of Antecedent Tribunal.		Dis
Low	Moderate	High	Affirmed	Reversed or Modified	Dismissed	Affirmed	Reversed or Modified	
14	4	2						
43	8	10	1	3	4	11	3	
5			1					
9		1	1		1	1	1	
1								
72	12	13	3	3	5	12	4	
4	9	8	4	7		1	9	
2	6		1	2		2	3	
2		2		1		1	2	
	1			1				
8	16	10	5	11		4	14	
3	1	5	1	2		5	1	
83	29	28	9	16	5	21	19	

CHART V

REVIEW OF CASES FROM THE OHIO BOARD OF TAX APPEALS 1962 TERM

	Disposition in Supreme Court			No. Cases with Dissenting Opinions	No. Cases with Dissenting Votes	No. Ca Decid Per Cu or Memora Disposi
	Affirmed	Reversed or Modified	Dismissed			
Prior Determination by Tax Commissioner	13	6		4	7	8
Originated in the Board of Tax Appeals	3	2	1			4
TOTAL	16	8	1	4	7	12

CHART VI

REVIEW OF CASES FROM THE PUBLIC UTILITIES COMMISSION 1962 TERM

Disposition in Supreme Court			No. Cases with Dissenting Opinions	No. Cases with Dissenting Votes	No. C Decid Per Cu or Memora Disposi
Affirmed	Reversed or Modified	Dismissed			
6	2	4	2		8

Significance			Disposition by Supreme Court of Cases Where Court of Appeals Reversed or Modified Decision of Antecedent Tribunal.			Disposition by Supreme Court of C Where Court of Appeals Affirmed cision of Antecedent Tribunal.		
Low	Moderate	High	Affirmed	Reversed or Modified	Dismissed	Affirmed	Reversed or Modified	Dism
10	6	3	3	2		10	4	
3		3						
13	6	6	3	2		10	4	

Significance		
Low	Moderate	High
8		4

CHART VII

OHIO SUPREME COURT

TYPE OF CASES AND DISPOSITION 1962 TERM

		LOW SIGNIFICANCE									
		ORIGIN			DISPOSITION			MEMORANDUM or PER CURIAM DISPOSITIONS			
of Case	*Grand Total*	Appeal	Motion to Certify	Certification	Affirmed	Reversed	Dismissed	Affirmed	Reversed	Dismissed	T
inistrative Law	3	1	1		1			1			
Procedure	9	7	1		2			1		5	
Service	3										
stitutional Law	18	12						2		10	1
racts	5	2	1			1				2	
orations											
itors Rights	2	1								1	
inal Law	15	14		1	1	1		1		12	1
rce	1										
ion Law	3	2								2	
ent Domain	5										
ence	8	5	1		1			1	2	2	
as Corpus	5	2			1					1	
rance	3										
r Law	2										
sing	3										
damus	7	5						3	1	1	
i. Corporations	6	4	1		1					4	
otiable Instru.	1										
ibition	1	1								1	
erty	2										
ic Utilities	11	7				1	1	3	1	1	
Warranto	2	2						1		1	
tion	35	17	1		4	4		5	1	4	1
s	11	3	3	1	1	1		1	1	3	
ts	3										
uthorized tice of Law	1	1						1			
nployment pensation	1										
s	5	2	1						1	2	
kmen's pensation	3	2								2	
ng	3	2								2	
TOTAL	177*	92	10	2	12	8	1	20	7	56	1

original jurisdiction cases are not included. See Charts X and XI.

CHART VII (continued)

OHIO SUPREME COURT

TYPE OF CASES AND DISPOSITION 1962 TERM

MODERATE SIGNIFICANCE

Type of Case	ORIGIN			DISPOSITION			MEMORANDUM or PER CURIAM DISPOSITIONS			Total
	Appeal	Motion to Certify	Certification	Affirmed	Reversed	Dismissed	Affirmed	Reversed	Dismissed	
Administrative Law		1			1					1
Civil Procedure		1			1					1
Civil Service	2				1			1		2
Constitutional Law										
Contracts			1		1					1
Corporations										
Creditors Rights										
Criminal Law										
Divorce		1			1					1
Election Law	1			1						1
Eminent Domain	1						1			1
Evidence	1	1			1				1	2
Habeas Corpus	2							1	1	2
Insurance		2			2					2
Labor Law	2								2	2
Licensing	1			1						1
Mandamus	1				1					1
Muni. Corporations	1								1	1
Negotiable Instru.										
Prohibition										
Property		1		1						1
Public Utilities										
Quo Warranto										
Taxation	6	1	1	2	2		3	1		8
Torts		3		1	2					3
Trusts		3		2	1					3
Unauthorized Practice of Law										
Unemployment Compensation										
Wills		1		1						1
Workmen's Compensation										
Zoning										
TOTAL	18	15	2	9	14		4	3	5	35

CHART VII (continued)

OHIO SUPREME COURT

TYPE OF CASES AND DISPOSITION 1962 TERM

	HIGH SIGNIFICANCE									
	ORIGIN			DISPOSITION			MEMORANDUM or PER CURIAM DISPOSITIONS			
Type of Case	Appeal	Motion to Certify	Certification	Affirmed	Reversed	Dismissed	Affirmed	Reversed	Dismissed	Total
Administrative Law										
Civil Procedure										
Civil Service	1						1			1
Constitutional Law	3	1	2	2	1			1	2	6
Contracts		1		1						1
Corporations										
Creditors Rights		1			1					1
Criminal Law										
Divorce										
Election Law										
Eminent Domain	4			1	1		1		1	4
Evidence										
Habeas Corpus	1				1					1
Insurance		1			1					1
Labor Law										
Licensing	1	1			2					2
Mandamus	1						1			1
Muni. Corporations										
Negotiable Instru.		1			1					1
Prohibition										
Property			1		1					1
Public Utilities	4			1		1	2			4
Quo Warranto										
Taxation	8	1		2	4		2	1		9
Torts		1			1					1
Trusts										
Unauthorized Practice of Law										
Unemployment Compensation	1				1					1
Wills		1						1		1
Workmen's Compensation		1			1					1
Zoning			1	1						1
TOTAL	24	9	5	8	16	1	7	3	3	38

CHART VIII

ANALYSIS OF CASES DECIDED BY OHIO SUPREME COURT 1962 TERM

Disposition	ORIGINAL JURISDICTION		MANDATORY APPEALS								PERMISSIVE APPEALS				CERTIFICATION
	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9	Class 10	Class 11	Class 12	Class 13	Class 14	Class 15
Affirmed			10	11	1	2		13	3	6	5	3	1		5
Reversed or Modified			5	6		1		6	2	2	16	5	3	1	4
Dismissed			5	44	5	6	1		1	4					
Disbarred	2														
Suspended	2														
Public Reprimand	2														
Writ Granted		6													
Writ Denied		43													
TOTAL	6	49	20	61	6	9	1	19	6	12	21	8	4	1	9
Memorandum or Per Curiam Dispositions			14	53	5	7	1	8	4	8	2	1	2	1	2
% of Total Volume	2.4+%	21%	8.5+%	26%	2.4+%	3.8+%	.4%	8.1+%	2.4+%	5.1+%	9+%	3.4+%	1.7+%	.4%	3.8+%
% of Cases with Dissenting Opinions			5%	5%	1.7%	11%		21%		16.7%	9.5%				
% of Cases with Dissenting Votes				1.6%		11%		36.8%			4.8%	12.5%			44.4%
% Reversed or Modified			25%	10%		11%		31.6%	33.3%	33.3%	76.2%	12.5%	75%	100%	44.4%
% Reversed			16.4%								73.6%				44.4%

Class 1.—Disciplinary Proceedings.
Class 2.—Extraordinary Writs.
Class 3.—Case originating in Court of Appeals.
Class 4.—Common Pleas — Tribunal antecedent to Court of Appeals.
Class 5.—Probate Court — Tribunal antecedent to Court of Appeals.
Class 6.—Municipal Court — Tribunal antecedent to Court of Appeals.
Class 7.—Board of Tax Appeals — Tribunal antecedent to Court of Appeals.
Class 8.—Appeal from Board of Tax Appeals where Tax Commissioner's determination antecedent to Board of Tax Appeals.
Class 9.—Original hearing in Board of Tax Appeals.
Class 10.—Original hearing in Public Utilities Commission.
Class 11.—Common Pleas — Tribunal antecedent to Court of Appeals.
Class 12.—Probate Court — Tribunal antecedent to Court of Appeals.
Class 13.—Municipal Court — Tribunal antecedent to Court of Appeals.
Class 14.—Board of Tax Appeals — Tribunal antecedent to Court of Appeals.
Class 15.—Certification by Court of Appeals.

CHART IX

OPINIONS OF THE CHIEF JUSTICE AND JUDGES OF THE OHIO SUPREME COURT

1962 TERM

	Majority Opinions	Total Length (in pages)	Average Length	Dissenting Opinions	Total Length	Concurring with Opinion
CARL V. WEYGANDT, C.J.	8	27.00	3.38	1	2.00	1
CHARLES B. ZIMMERMAN	11	31.00	2.82	3	2.25	1
KINGSLEY A. TAFT	12	43.00	3.58	5	9.75	6
JOHN M. MATTHIAS	12	43.00	3.58			
JAMES F. BELL	7	22.00	3.20	3	6.00	4
THOMAS J. HERBERT	2	5.00	2.50			
C. WILLIAM O'NEILL	14	49.50	3.54	1	1.00	
WILLIAM D. RADCLIFF*	3	16.25	5.40			
LYNN B. GRIFFITH*	2	7.00	3.50			
RAYMOND A. YOUNGER*	1	2.00	2.00			
JAMES COLLIER*	2	6.00	3.00			
ARTHUR W. DOYLE*	1	7.00	7.00			
WILLIAM C. BRYANT*	2	24.00	12.00			
CALVIN CRAWFORD*	1	1.50	1.50			
TOTAL	78	284.25	3.64	13	21.00	12
Memo. Dispositions or Per Curiam Opinions	154	151.00	.98			
TOTAL	232	435.25	1.88			

*Judges of the court of appeals temporarily assigned to sit as supreme court judges pursuant to OHIO CONST. art. IV, § 2.

Total Length	Dissenting in Part Opinions	Total Length	Dissent without Opinion	Concurring in Dissenting Opinion	Concurring in the Judgment But Not the Opinion	Concurring in Dissenting in Part Opinions	Concurring in Concurring Opinions
.25			7	1	2		1
.25			2		1		3
8.00	1	2.00	7		5	2	1
			4				
4.50			6	1			1
			2				
	3	7.50	8	3	1		2
	1	.50					
13.00	5	10.00	36	5	9	2	8

CHART X

OHIO SUPREME COURT ORIGINAL JURISDICTION

Prerogative Writs

	FULL WRITTEN OPINION			MEMORANDUM or PER CURIAM DISPOSITION			
	SIGNIFICANCE			SIGNIFICANCE			
	LOW	MODERATE	HIGH	LOW	MODERATE	HIGH	TOTAL
Mandamus	3	1	3	8	3	2	20
Habeas Corpus				21	4	2	27
Prohibition				1			1
Quo Warranto			1				1
TOTAL							49

CHART XI

ORIGINAL JURISDICTION

DISCIPLINARY PROCEEDINGS

ATTORNEYS AT LAW

DISBARMENT	SUSPENSION	PUBLIC REPRIMAND
2	2	2

CHART XII

DISTRIBUTION OF CASES

ORIGINAL	APPEAL OF RIGHT	PERMISSIVE	CERTIFICATION
23.70%	55.75+%	18.00+%	3.50+%

CHART XIII

NEW JERSEY JUDICIAL SYSTEM — 1960

SUPREME COURT

Chief Justice and 6 Associates.

Initial Term of 7 years with tenure on reappointment and mandatory retirement at 70.

Final appeal in:

1. Constitutional questions.
2. Where dissent in Appellate Division.
3. Capital causes.
4. Certifications.
5. In such causes as provided by law.

SUPERIOR COURT

44 Judges. Term, tenure, and retirement same as Supreme Court.

LAW DIVISION	APPELLATE DIVISION	CHANCERY DIVISION
1. General jurisdiction in all causes, civil and criminal.	Appeals from:	1. General Equity.
2. Proceedings in lieu of prerogative writs, except review of state administrative agencies.	1. Law and Chancery Divisions.	2. Matrimonial.
	2. County Courts.	3. Probate.
	3. County District Courts.	
	4. Juvenile and Domestic Relations Courts.	
	5. State Administrative Agencies.	
	6. As provided by law.	

21 COUNTY COURTS

69 Judges authorized, 1 to 8 per county. Term: 5 years.

1. LAW DIVISION: General jurisdiction, civil and criminal within county. Hears appeals from municipal courts and Division of Workmen's Compensation.
2. PROBATE DIVISION: Contested probate matters.
3. No equity jurisdiction except as required to finally resolve matter in controversy.

507 MUNICIPAL COURTS	21 COUNTY DISTRICT COURTS	21 JUVENILE AND DOMESTIC RELATIONS COURTS	21 SURROGATE COURTS
1. Traffic.	1. Contract actions to $1,000.	1. Exclusive jurisdiction juveniles.	1. Uncontested probate matters.
2. Minor criminal.	2. Negligence actions to $3,000.	2. Support.	2. Serves as clerk of Probate Division of County Court.
3. Ordinance violations.	3. Landlord and Tenant.	3. Temporary custody of children.	
4. Arraignments.	4. Concurrent jurisdiction with Municipal Courts.	4. Adoptions.	

CHART XIV

ANALYSIS OF APPEALS DECIDED BY THE NEW JERSEY SUPREME COURT

June 6, 1960 - February 26, 1962

Disposition		MANDATORY APPEALS			PERMISSIVE APPEALS			
	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8
Affirmed		3	8	1	44	2	6	5
Affirmed and Reversed in Part		1			3		2	1
Reversed		1	1		6	1	3	6
Reversed and Remanded		1	3	1	16	2	10	3
Modified						2	1	1
Affirmed Per Curiam		10	3	6	11	1	5	5
Reversed Per Curiam		1		3	5	1	3	
Disbarred	10							
Reprimanded	2							
Reinstated	2							
Dismissed	2			1				
Total Cases	16	17	15	12	85	9	30	21
% of Total Volume	8%	8%	8%	6%	41%	4%	14%	10%
% of Cases with Dissenting Opinions		3%			12%		16%	
% of Cases with Dissenting Votes		16%			14%		18%	
% Reversed		28%			35%	66%	60%	

Class 1—Original jurisdiction — disciplinary proceedings.

Class 2—Dissent in Appellate Division.

Class 3—Capital cases.

Class 4—Other.

Class 5—Certification court's own motion before hearing in Appellate Division.

Class 6—Certification party's own motion before hearing in Appellate Division.

Class 7—Certification party's own motion after hearing in Appellate Division where Appellate Division affirmed court below.

Class 8—Certification party's own motion after hearing in Appellate Division where Appellate Division reversed court below.

CHART XV

NEW JERSEY SUPREME COURT
APPEALS CLASSIFIED JURISDICTIONALLY*

	1950-1951	1951-1952	1952-1953	1953-1954	1954-1955	1961-1962
Appeal as of Right	18 (12%)	17 (12%)	34 (21%)	37 (21%)	32 (17%)	34 (24%)
Certified on Petition	30 (20%)	49 (33%)	64 (39%)	55 (32%)	56 (30%)	38 (27%)
Certified by Court	98 (68%)	81 (55%)	65 (40%)	81 (47%)	98 (53%)	67 (49%)
TOTAL	146	147	163	173	186	139

DISPOSITION OF PETITIONS FOR CERTIFICATION

Number of Petitions	91	86	114	106	90	125
Granted	40	40	64	59	51	38
Denied	51	45	49	47	39	87
Dismissed		1	1			
% Denied	53%	52%	43%	46%	43%	70%

CLASSIFICATION OF OPINIONS

Majority	155	158	86
Concurring	8	6	2
Dissenting	33	33	9
Per Curiam	21	21	44
TOTAL	217	218	141

CASES WITH DISSENTING VOTES

1 Dissenting	34	28	32	33	2
2 Dissenting	25	22	27	22	4
3 Dissenting	5	14	17	20	1

DISSENTING OPINIONS FILED

1 Dissenting Vote	9	7	13	8	3
2 Dissenting Votes	11	16	12	11	5
3 Dissenting Votes	1	12	7	12	1

*Statistics for 1950-1955 from Stoffer, *The Work of the Judicial System: 1954-1955*, 10 RUTGERS L. REV. 381 (1955).

CHART XVI

NEW JERSEY SUPREME COURT 1960-1961 TERM

TYPES OF APPEALS DECIDED

Accounting	1	Misconduct in Office	1
Bribery	1	Motor Vehicles	1
Conflict of Interest	1	Municipal Affairs	5
Conspiracy	2	Murder	16
Contempt	3	Narcotics	3
Contract	14	Negligence	12
Declaratory Judgment	1	Negotiable Instruments	1
Domestic Relations	1	Obscene Literature	2
Elections	1	Public Office and Employment	10
Eminent Domain	2	Quiet Title	1
Escheat	1	Reapportionment	2
Extortion	1	Set Aside Conveyance	1
Extradition	1	State Agency Action	7
Counsel Fee	1	Statutory Construction	1
Forgery	1	Taxation	6
Fraud	1	Unemployment Compensation	1
Grand Jury Presentment	1	Unlawful Practice of Law	1
Injunction	3	Unsatisfied Judgment Fund	1
Labor Relations	1	Utility Regulation	5
Larceny	1	Wills and Estates	7
Libel	1	Workmen's Compensation	5
Malpractice	2	Zoning	7
Mechanics Lien	1	TOTAL	139

TRIBUNAL BELOW FOR APPEALS DECIDED

Superior Court, Appellate Division	55
Superior Court, Law Division	38
Superior Court, Chancery Division	12
County Court	21
Juvenile and Domestic Relations Court	1
State Agencies:	
Division of Tax Appeals	5
Department of Public Utilites	1
Office of Milk Industry	1
Department of Labor and Industry	1
Department of Education	1
Department of Civil Service	1
Department of Treasury	1
Board of Optometry	1
TOTAL	139

Source: REPORT OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS (1961).

CHART XVII

NEW JERSEY SUPREME COURT

OPINIONS OF THE JUSTICES PUBLISHED DURING 1960-1961 TERM

	Majority* Opinions	Disssenting Opinions	Dissent without Opinion	Concurring with Opinion	Concurring without Opinion	Total Opinions Written
WEINTRAUB	15		1	2		17
JACOBS	13	1			1	14
FRANCIS	15	2				17
PROCTOR	15	2	1			17
HALL	7	3	7		3	10
SCHETTINO	11	1	5			12
HANEMAN	9	1	4			10
TOTAL	85	10	18	2	4	97
Opinions per Justice	12					14
Per Curiam Opinions	44					

LENGTH OF OPINIONS IN PAGES.

Mean	10
Median	9
Shortest	1
Longest	29

*An opinion by the late Justice Burling is omitted from these statistics.

CHART XVIII

NEW JERSEY SUPREME COURT

GROUNDS FOR CERTIFICATION, N. J. REV. RULE 1:10-2*

Grounds	Granted	Denied	Percentage Denied
1. Where the Appellate Division has decided a question of substance not theretofore determined by a court of last resort of this State, or has decided it in a way probably not in accord with applicable decisions of such court.	8[1]	25[2]	80%
2. Where the decision under review is in conflict with any other decision of the Appellate Division.		4[3]	100%
3. Where the judges of the Appellate Division concur in result, but are unable to agree upon a common ground of decision.			
4. Where the Appellate Division has decided an important question of law which has not been, but should be settled by this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower tribunal as to call for an exercise of this court's supervision.	1	11[4]	92%
5. Where the Appellate Division has decided a question of substance relating to the construction or application of a statute of this State, which has not been, but should be settled by this court.	5[5]	5[6]	50%
6. Injustice.		2	100%
7. Settled law should be overruled.	1		
TOTAL	15	47	76%

1. One petition also urged No. 2, another No. 4.
2. Three petitions also urged No. 6, one petition No. 4, one petition No. 5, and one petition No. 1, No. 2, and No. 4.
3. Two petitions also urged No. 1, one petition No. 6.
4. One petition also urged No. 1, another No. 5.
5. One petition also urged No. 4, another No. 1.
6. One petition also urged No. 2, one petition No. 4, and one petition No. 1, No. 2, and No. 4.

*Statistics based on representative sample of sixty-two 1961-1962 petitions for certification.

CHART XIX

OHIO SUPREME COURT

DISPOSITION OF MOTIONS TO CERTIFY*

YEAR	1957	1958	1959	1960
Motions to Certify Denied	223	252	270	256
Motions to Certify Granted	70	89	76	63
Percentage Denied	76.4%	73.6%	78%	80.7%
TOTAL	293	341	346	319

*Source: *Judicial Statistics,* FOURTEENTH REPORT OF THE JUDICIAL COUNCIL OF OHIO 27 (1959); *Judicial Statistics,* FIFTEENTH REPORT OF THE JUDICIAL COUNCIL OF OHIO 31 (1961).